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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)
H1310

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ August 27, 2008 _____ Signature _____ /Christine Gillroy/ _____ Typed or printed name _____ Christine Gillroy _____	**Application Number** 10/701,092 **Filed** November 4, 2003 **First Named Inventor** Prasad P. Padiyar et al. **Art Unit** 2616 **Examiner** Mohammad Sajid Adhami

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
     Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☑ attorney or agent of record.   36,981
Registration number _____

☐ attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

/Thomas G. Eschweiler/
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Telephone number
August 27, 2008
_____
Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.

☐ *Total of _____ forms are submitted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re **PATENT** application of:

Applicant:	Prasad P. Padiyar et al.
Application No.:	10/701,092
For:	DYNAMIC INTER PACKET GAP GENERATION SYSTEM AND METHOD
Filing Date:	November 4, 2003
Examiner:	Mohammad Sajid Adhami
Art Unit:	2616

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Favorable reconsideration of the above-identified application is respectfully requested in view of the following remarks.

REMARKS

Claims 1-22 are pending and are all rejected. Reconsideration of the application in light of the following remarks is respectfully requested.

I. **REJECTION OF CLAIMS 1, 2, 4, 6, 8-11, and 13-21 UNDER 35 U.S.C. § 102(b)**

Claims 1, 8, 10, 13 and 17 were rejected under 35 U.S.C. §102(b) as being anticipated by Ramakrishnan (US 5,418,784). The remaining claims depend on claims 1, 10 and 13.

    i.   *Ramakrishnan does not disclose a determiner that generates an IPG value that is a function of <u>programmable parameters</u>, as in the claims 1, 10 and 13.*

The invention of claims 1, 10 and 13 specifically state that a dynamic determiner generates an IPG value that is a function of a collision count **and programmable parameters**. Trintec Industries, Inc. v. Top-U.S.A. Corp., 295 F.3d 1292, 63 USPQ2d 1597 (Fed. Cir. 2002), requires a single prior art reference to expressly or inherently describe each and every limitation set forth in the patent claim in order to anticipate a patent claim. Ramakrishnan **does not "expressly or inherently describe" using programmable parameters** to generate an IPG value, therefore, because each and every limitation set forth in the patent claim is not expressly or inherently described by the reference, the reference does not anticipate the patent claims.

Further, Richardson v. Suzuki Motor Co., 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989), requires the identical invention to be shown in as complete detail as is contained in the claim to anticipate the claim. Here, **the identical invention, is not "shown in as complete detail"** in Ramakrishnan as contained in claims 1, 10, and 13, as **Ramakrishnan does not use programmable parameters** to generate IPG values.

The claims 1, 10 and 13 detail generating IPG values that are a function of collision counts **and programmable parameters,** which include at least one of: a range of IPG values; a convergence time; and a stable state time. On page 4, lines 21-24, the specification defines what is meant by "programmable parameters" when it states, "these multiple stations can be controlled and programmed by a network coordinator that sets programmable parameters for dynamic IPG generation of each station so as to even further improve overall network throughput." The specification is clearly defining programmable parameters as those that a network coordinator can set (program), for dynamic IPG generation, to improve network throughput. Further, on page 15, lines 21-23 (and page 17, lines 2-3), the specification states, "[t]he method employs programmable parameters so that the method can be tailored to differing implementations." Again, this reference shows that programming the parameters can be used to tailor the system, as is a common use of programmable parameters. Additionally, on page 17, lines 10-12, the specification states, "the programmable parameters are set or programmed," further describing parameter programming.

In contrast, the Ramakrishnan reference does not disclose or suggest **programmable** parameters, and consequently, does not include programmable parameters when generating an IPG value. In Ramakrishnan, the parameters alleged by the Final Office Action as being equivalent to the programmable parameters of the invention of claim 1, 10, and 13, *are not programmable* as defined by the specification. Ramakrishnan describes automatically selecting an IPG interval by "progressively increas[ing] the IPG interval ... until another node has successfully transmitted a packet of data" (column 6, lines 43-46). Further, Ramakrishnan "then computes ... the extended IPG as a linearly increasing value given by 9.6+10(N+1) μs" (column 8, lines 41-43). These teachings indicate that the IPG value as an alleged parameter is automatically generated based upon collision detection, and is not programmable as defined by the applicant's specification, as described above.

Additionally, the Final Office Action alleges that the applicant's "stable state time" programmable parameter is equivalent to Ramakrishnan's "slot time." However, the "stable state time" is defined in the applicant's specification as "a period for which IPG values obtained remain programmed in the network device without modification" (page 15, lines 29-31). In contrast, Ramakrishnan's "slot time" is defined as "the maximum round-trip propagation time for the network, i.e. the time to propagate a data packet from one end of the network to the other, and back" (column 1, lines 52-55). Clearly then, the "slot time" of the cited reference is not a "stable state time" as claimed.

Further, the Final Office Action alleges that the applicant's "convergence time" programmable parameter is equivalent to Ramakrishnan's "time after collision." However, "convergence time" is defined in the applicant's specification as "the time period for which the dynamic determiner is permitted to obtain an improved IPG value" (page 12, lines 18-21), not a "time after collision" as alleged by the Final Office Action. Therefore, the "time after collision" of the cited reference is not a "convergence time" as claimed.

Additionally, the examiner notes that "although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims."

However, the applicant's are not asking for limitations to be read in the claims; rather, applicants merely request that the specification be employed to interpret what is meant by a word or phrase in a claim. "Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim." Toro Co. v. White Consolidated Industries Inc., 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999). Terms found in the applicants' claims are explicitly defined in the specification, as described above, in order to avoid confusion to those skilled in the art (see MPEP §§ 2111.01 and 2173.01).

As described above, **the alleged Ramakrishnan parameters are not programmable parameters as defined by the applicant's specification.** Therefore, the Ramakrishnan reference does not use the programmable parameters as described in claims 1, 10 and 13 to modify the function when generating an IPG value.

Therefore, Ramakrishnan does not disclose all aspects set forth in claims 1, 10, and 13. Accordingly, withdrawal of the rejection of claims 1, 10, 13 and their respective dependent claims is respectfully requested.

ii.   *Ramakrishnan does not disclose or suggest using a convergence time, or a stable state time, for generating IPG values, as set forth in claims 8 and 17.*

The invention of claims 8 and 17 state that a dynamically generated IPG value is a function of an IPG range, a step value, a convergence time, *and* a stable state time. The language of these claims provides that the IPG value is a function of **all** of the limitations described. In contrast, as described above, **Ramakrishnan does not "expressly or inherently describe" using either a convergence time or a stable state time** for these functions. The Office Action alleges that, because a formula in Ramakrishnan calculates IPG values, it is analogous. However, the formula does not include parameters for both a convergence time, and a stable state time. Therefore, because Ramakrishnan does not disclose all aspects set forth in claims 8 and 17, we respectfully request withdrawal of the rejection of claims 8 and 17.

III. REJECTION OF CLAIMS 3 and 22 UNDER 35 U.S.C. § 103(a)

Claims 3 and 22 were rejected under 35 U.S.C. §103(a) as being unpatentable over Ramakrishnan. As discussed above, **we do not concede that Ramakrishnan meets all the limitations of the parent claims.**

The Final Office Action alleges that the steady state time (and the equivalent stable state period as described in page 14, lines 15-17) in these claims, is equivalent to Ramakrishnan's "time between detected collisions." As described above, the **applicant's specification <u>clearly defines</u> steady state time**, which is not determined by a "time between detected collisions." Therefore, there is no 35 U.S.C. §103(a) basis for rejection of claims 3 and 22 as alleged by the Final Office Action, and withdrawal of the rejection of claims 3 and 22 is respectfully requested.

III. CONCLUSION

For at least the above reasons, the claims currently pending and rejected are believed to be in condition for allowance. Should any fees be due as a result of the filing of this response, the Commissioner is hereby authorized to charge the Deposit Account Number 50-1733, AMDP771US.

Respectfully submitted,
ESCHWEILER & ASSOCIATES, LLC

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